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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,109	03/26/2004	Kenneth David Harris JR.	Brook.1022 (33964/1080)	9222
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NIXON PEABODY LLP 401 9TH STREET, N.W. SUITE 900 WASHINGTON, DC 20004			EXAMINER EDWARDS JR, TIMOTHY	
			ART UNIT 2612	PAPER NUMBER

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/811,109

Applicant(s)

HARRIS ET AL.

Examiner

Timothy Edwards, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3,8,9,13-18,23,24 are rejected under 35 U.S.C. 102(b) as being anticipated by Alvarez '354 (submitted IDS).

Considering claim 1, Alvarez disclose a temperature monitoring assembly comprising,  
a) a temperature sensor (see col 2, lines 35-43); b) a temperature sensor base having a transmitter and a microphone wherein the temperature sensor base is electrical coupled to the temperature sensor (see col 3, lines 14-27, col 6, lines 30-44 and fig 1, item 44');  
c) a monitor having a speaker and a receiver for communicating with the transmitter of the temperature sensor base, wherein the temperature sensor base transmits sensed temperature and an audio signal produced by the microphone (see col 2, lines 14-41, col 6, lines 47-55 and fig 2, item 46').

With respect to preamble of claim 1, the intended use of applicant's apparatus in a food monitoring capacity is not give any patentable weight by the Examiner. The claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. One of ordinary skill in the art would have the ability to use any

structure constructed to monitor temperature and modify this structure, without any undue experimentation, to function as a sensor for monitoring temperature of any type by merely using the proper type temperature sensor.

Considering claim 2, Alvarez discloses the limitation of this claim (see col 6, lines 35-50, col 9, lines 10-35 and figs 6 and 7 items 44' and 46' respectively).

Considering claim 3, Alvarez discloses the limitation of this claim (see col 5, lines 38-52).

Considering claims 8 and 9, Alvarez discloses the limitations of these claims (see col 6, lines 35-50 and figs 6 and 7).

Considering claim 13, the limitations of this claim are interpreted and rejected as stated in claim 1.

Considering claim 14, Alvarez discloses the limitation of this claim (see col 5, lines 38-52 and col 9, lines 19-29).

Considering claims 15,17,18,24 the limitations of this claim are interpreted and rejected as stated in claim 2.

Considering claim 16, the limitations of this claim are interpreted and rejected as stated in claim 1.

Considering claim 23, the limitations of this claim are interpreted and rejected as stated in claim 1.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4-7,12,19,20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alvarez as applied to claim 1 above, and further in view of Norcross '739 (submitted IDS).

Considering claim 4, Alvarez discloses a monitoring unit comprising a display, which continuously displays temperatures readings. Alvarez does not recite a display having a doneness scale containing multiple stages of doneness. One of ordinary skill in the art would have the ability to use any structure constructed to monitor temperature and modify this structure, without any undue experimentation, to function as a sensor for monitoring temperature of any type by merely using the proper type of temperature sensor. Norcross teaches the use of a temperature-sensing device having a display on

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which a user can view a doneness scale containing multiple stages of doneness (see col 11, lines 10-21 and col 13, lines 6-10). Therefore, it would have been obvious to one of ordinary skill in the art to modify the display of the Alvarez temperature monitoring unit to include a display as taught by Norcross because both monitoring units are concern with displaying sensed temperature and broadcasting an audio signal.

Considering claim 5, Alvarez does not specifically recite the temperature sensor is a piercing element. Norcross teaches the use of a temperature sensor is a piercing element (see col 8, lines 3-11). Obviousness is as stated in claim 4.

Considering claim 6, Alvarez does not specifically recite a monitoring unit comprising one or more buttons used to scroll through a set of options on the display. Norcross teaches the use of a temperature-sensing device having one or more buttons used to scroll through a set of options on the display (see col 11, lines 26-38). Obviousness is as stated in claim 4.

Considering claim 7, Alvarez discloses a monitoring unit comprising a display, which continuously displays temperatures readings. Alvarez does not specifically recite a monitoring unit whereby the temperature sensed by the temperature sensor and a target temperature is shown on the display. Norcross teaches the use of a temperature-sensing device whereby the temperature sensed by the temperature sensor and a

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target temperature is shown on the display (see col 10, lines 37-49). Obviousness is as stated in claim 4.

Considering claim 12, the limitation of this claim is interpreted and rejected as stated in claim 4.

Considering claim 19, the limitations of this claim are interpreted and rejected as stated in claim 4.

Considering claim 20, the limitations of this claim are interpreted and rejected as stated in claim 6.

5. Claims 10,11,21,22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alvarez '354.

Considering claim 10, Alvarez does not specifically recite the transmitter of the temperature sensor transmits a temperature sensed by the temperature sensor at a first frequency range and transmits an audio signal produced by the microphone at a second frequency range. Alvarez discloses a temperature-sensing unit comprising a transmitter for transmitting sensed temperature and audio signal produced by a microphone (see col 9, lines 10-36). Alvarez also discloses the control circuit and components are not exhaustive of the ultimate circuitry and components used within the production of his

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invention. Alvarez states different control assembly and/or advanced circuitry components maybe used in his invention (see col 9, lines 37-45). One of ordinary skill in the art would have the knowledge to modify the transmitter of the Alvarez system to transmits a temperature sensed by the temperature sensor at a first frequency range and transmits an audio signal produced by the microphone at a second frequency range because Alvarez discloses the desire to transmit sensed temperature and audio signals. Therefore, it would have been obvious to one of ordinary skill in the art to modify the transmitting circuitry of the Alvarez system because Alvarez suggests the use of utilizing alternate and/or advance circuitry components in his system.

Considering claim 11, Alvarez discloses a monitoring unit comprising a speaker for broadcasting an audible signal. Alvarez does not specifically recite broadcasting sensed temperature. Alvarez discloses the alarm assembly may include a visual, audible and/or tactile/vibrating alarm (see col 6, lines 59-67). Therefore, it would be obvious to one of ordinary skill in the art to modify the monitoring unit of the Alvarez system to broadcast the sensed temperature because Alvarez discloses the desire to broadcast an audible signal when a critical or dangerous temperature level is sensed.

Considering claim 21, the limitations of this claim are interpreted and rejected as stated in claim 10.



Considering claim 22, the limitations of this claim are interpreted and rejected as stated in claim 11.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Regennitter et al '841, Kennamer '991 and Wallace '757 disclose a temperature sensing systems. Rubinstein '745 discloses a temperature sensing system comprising a microphone and speaker.

Any inquiry concerning this communication should be directed to Examiner Timothy Edwards, Jr. at telephone number (571) 272-3067. The examiner can normally be reached on Monday-Thursday, 8:00 a.m.-6:00 p.m. The examiner cannot be reached on Fridays.

If attempt to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wendy Garber, can be reached at (571) 272-7308.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-4700, Mon-Fri., 8:30 a.m.-5:00 p.m.

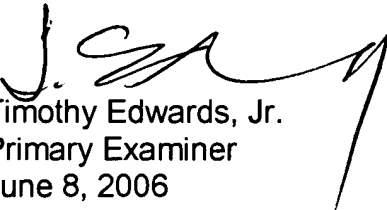
Any response to this action should be fax to:

(571) 273-8300 (for formal communications intended for entry).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published

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applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov> or contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Timothy Edwards, Jr.  
Primary Examiner  
June 8, 2006